

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the comments which follow.

Claims 1-12 were pending in this application. In this response, claims 1-12 are amended, no claims are canceled, and claims 13-20 are added. Thus, claims 1-20 remain pending.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims and the specification, page 5, lines 11-15, page 9, lines 28-32 and page 12, lines 26-33. Claim 6 has been amended, at least in part, to correct the spelling of "center."

CLAIM OBJECTION

Claim 10 is objected to because of the reasons appearing at page 2 of the Official Action. The typographical error in claim 10 has been corrected. Reconsideration is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 112

Claims 3-8 and 10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention on the grounds set forth on page 2 of the Official Action.

Claim 1 has been amended to clarify that the claimed invention is a distributor plate releasably mounted in a rotor for a vertical shaft impact crusher. Therefore, limitations related to the relationship between the distributor plate and the rotor in which it is mounted are structural and are part of the claim. Reconsideration of the rejection is respectfully requested.

Additionally, claims 13-20 are added to clearly define a distributor plate that is adapted to be releasably mounted on a horizontal lower disc of a rotor of a vertical shaft impact crusher. In this set of claims, the structural features are to structural elements of the distributor plate. Therefore, the new claims are definite and clearly define only the distributor plate.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-8 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,037,035 to Garland (hereafter "*Garland*") or by U.S. Patent No. 5,366,170 to Jones, Jr. et al. (hereafter "*Jones*") on the grounds set forth at page 3 of the Official Action.

Applicants respectfully traverse. To establish a *prima facie* case of anticipation, a single prior art reference must teach each and every element of the claimed invention, either explicitly or inherently. *Verdegaal Bros. v. Union Oil Co. Cal.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). *Garland* and *Jones* each fail to disclose each and every element of the claimed invention.

1. *Garland*

Garland at least fails to disclose that the "shape of the distributor plate is an equilateral polygon as seen from above," as recited in claims 1 and 13. The Examiner appears to rely on the accelerator plate 20 of *Garland* shown in Figure 4A for alleged anticipation of the claimed invention. However, the accelerator plate 20 of *Garland* may be a polygon, but is not an equilateral polygon. As seen in Figure 4A, the sides of the polygon have different lengths.

Further, it would not be obvious to form the plate with equal sides, because *Garland* specifically desires the plate to be formed with triangular projections spaced about its circumference. *See, e.g.*, col. 2, ll. 50-52. If proposed modification would render the prior art

invention being modified unsatisfactory for its intended purpose, then there is no suggestion or predictability in making the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). See also MPEP § 2143.01 (V). This particular shape is required by *Garland*, as he discloses such a particular shape impels material into a plurality of ducts in his design. See, e.g., col. 2, ll. 54-57. The accelerator plate is formed with a triangular projection for each duct, to impel material into each duct. Therefore, the purpose of *Garland* would be rendered unmet or unsatisfactory for its intended purpose if an equilateral polygonal shape were used, because an equilateral polygon does not have projections to impel material into specific ducts.

Dependent claims 2-10, 12, and 14-20, which depend from claims 1 and 13, respectively, are also not anticipated or obvious for at least the same reasons as for claims 1 and 13. A *prima facie* case of anticipation or obviousness is not established based on *Garland*, and thus Applicants respectfully request withdrawal of the rejection.

2. Jones

Jones at least fails to disclose that the “shape of the distributor plate is an equilateral polygon as seen from above,” as recited in claims 1 and 13. The Examiner appears to rely on a combination of the distribution plate 42 and gussets 54 of *Jones* for alleged anticipation of the claimed invention. However, it is not clear how a combination of the distribution plate and gussets describe an equilateral polygon as seen from above. The gussets 54 seen from above are merely an edge, which at most is a thin rectangle, without equal sides. See, e.g., Fig. 3 and col. 4, ll. 57-60. Furthermore, and even further removed from the equilateral polygon shape of the claims, the distribution plate 42 in *Jones* is described as a circular horizontal distribution plate. See, e.g., col. 4, ll. 30-34. Even if one considers the noted Figures as showing from the bottom

view a distribution plate with an octagonal shape, there is no description of the octagon being equilateral. The only Figures representing the octagonal shape are Figures 3 and 7, in which the edges perpendicular to elements 58 are longer than the edges perpendicular to gussets 54, and therefore are not equilateral. Furthermore, even if the bottom of the distribution plate had an equilateral polygonal shape, the plate as seen from above would still be circular. Therefore, for at least these reasons, *Jones* fails to describe each and every element of claims 1 and 13.

Further, it would not have been obvious to form the distribution plate of *Jones* to have an equilateral polygonal shape as seen from above. *Jones* specifically desires a circular shape for the distribution plate, and provides no suggestion that an equilateral polygon would be a substitute. The distribution plate of *Jones* is required to be circular, because the purpose of the distribution plate of *Jones* is to allow an eccentric wheel to cyclically distribute material in a circular array around the distribution plate. *See, e.g.*, col. 2, ll. 43-52. As the material on the plate accumulates, it is cyclically urged in a circular pattern radially outwardly by the eccentric wheel until it drops off an outer periphery of the plate. *See, e.g.*, col. 2, ll. 53-65. If the top surface of the distribution plate were modified to include an equilateral polygon shape as opposed to the circular shape of *Jones*, the material could not be cyclically distributed and would not drop off the plate at the same rate around the outer periphery. Therefore, substituting an equilateral polygon for the circular shape described in *Jones* for the top surface of the distribution plate, would render the distribution plate unsatisfactory for its intended purpose of cyclically distributing the material.

Dependent claims 2-10, 12, and 14-20, which depend from claims 1 and 13, respectively, are also not anticipated or obvious for at least the same reasons as for claims 1 and 13. *A prima*

facie case of anticipation or obviousness is not established based on *Jones*, and thus Applicants respectfully request withdrawal of the rejection.

Claims 7, 9, 12, and 16-18 are not anticipated or obvious over *Jones*, for at least the additional reason, that each of those claims requires the top surface of the distribution plate to be unbroken and free of recesses. *Jones* specifically requires a distributor wheel mounted on a vertical shaft driven by a motor for rotational movement adjacent the top surface of the distribution plate. *See, e.g.*, col. 4, ll. 39-47. *Jones* requires a through going hole in the distribution plate for connection between the distributor wheel and the motor driving it. *See, e.g.*, Figure 4 and col. 5, ll. 47-51. Without the through going hole in the distribution plate of *Jones*, the intended purpose of the device to cyclically distribute material via a distributor wheel adjacent the top surface of the distribution plate would not be possible. Therefore, a top surface of a distribution plate being unbroken or free of recesses would not be anticipated or obvious over the distribution plate of *Jones*.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 9 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garland* on the grounds set forth at page 3 of the Official Action.

Claims 9 and 12 are dependent on claim 1, and thus without additional reasoning or other contribution are not anticipated or obvious over *Garland* for at least the same reasons as for claim 1 presented above. A *prima facie* case of anticipation or obviousness is not established, and thus Applicants respectfully request withdrawal of the rejection.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

DRINKER, BIDDLE & REATH LLP

Date: November 17, 2008

By: Christopher P. Bruenjes
Christopher P. Bruenjes
Reg. No. 62,941

CUSTOMER NO. 055694

DRINKER, BIDDLE & REATH LLP

1500 K Street, N.W., Suite 1100

Washington, D.C. 20005-1209

Tel: (202) 842-8800

F: (202) 842-8465